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OFFICE OF PETITIONS

In re Patent No. 6,310,036
Issue Date: October 30, 2001
Application No. 09/227,400
Filed: January 9, 1999
Attorney Docket No.: 17347-301

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed April 5, 2012, to accept an unintentionally delayed payment of the second maintenance fee for the above-identified patent.

The petition is DISMISSED.

It is initially pointed out that the petition cannot be accepted because the petition is not signed by an attorney or agent registered to practice before the U. S. Patent and Trademark Office, the patentee, or the assignee or other party in interest as established by 37 CFR 3.73(b)¹. See 37 CFR 1.378(d).

Further, it is noted that this patent issued on October 30, 2001. Accordingly, the second maintenance fee could have been paid during the period from October 30, 2008 through April 30, 2009, or with a surcharge during the period from May 1, 2009 through October 30, 2009. As no payment was timely received, this patent expired at midnight on October 30, 2009.

35 U.S.C. § 41(c)(1) authorizes the Director to accept a delayed maintenance fee payment within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) if the delay is shown to have been unintentional, and authorizes the Director to accept a delayed maintenance fee payment at any time if the delay is shown to have been unavoidable. Thus, 35 U.S.C. § 41(c)(1) does not authorize the Director to accept a delayed maintenance fee payment

¹37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office.

later than twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) unless the delay is shown to have been unavoidable. Since the instant petition was not filed within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b), the Director cannot accept a delayed maintenance fee payment for the above-identified patent under 37 CFR 1.378(c).

Since the patent will not be reinstated pursuant to 37 CFR 1.378(c), petitioner is entitled to a refund of the \$2,355 fee submitted with the petition. Any request for refund must include a copy of this decision and be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (571) 273-6500.

Patentee may wish to pursue reinstatement of the patent under the unavoidable provisions of 37 CFR 1.378(b). A petition to accept the delayed payment of a maintenance fee under 35 USC 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate, showing that the delay was unavoidable, since reasonable care was taken to insure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1). Further, if a petition for reinstatement of the patent under the unavoidable provisions is filed on behalf of the assignee, the petition must also comply with the provisions of 37 CFR 3.73(b).

Any petition under the provisions of 37 CFR 1.378(b) must be filed within TWO MONTHS of the date of this decision and should be delivered through one of the following mediums:

By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
 ATTN: Office of Petitions

By Internet: EFS-Web²

² www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

A courtesy copy of this decision is being mailed to petitioner at the address noted on the petition. Unless otherwise directed, all future correspondence regarding this patent will be directed solely to the above-noted correspondence address of record.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: LINDA M. SHECTERLE
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